

Upper Clark Fork River Basin Steering Committee
Meeting Summary
February 13, 2008

Introductions

Gerald Mueller and members of the Upper Clark Fork River Basin Steering Committee (Steering Committee) introduced themselves. Those in attendance included:

Members

Carol Fox
Jim Quigley
Bob Benson
Marci Sheehan
Holly Franz
Jim Dinsmore
Mike McLane
Stan Bradshaw
Senator Dave Lewis

Group/Organization Represented

Natural Resource Damage Program (NRD)
Little Blackfoot River
Clark Fork Coalition
Atlantic Richfield (ARCO)
PPL Montana
Granite Conservation District
Montana Department of Fish, Wildlife and Parks (DFWP)
Trout Unlimited
Lewis and Clark County

Public

Walt Hill Seeley Lake Water District

Agency Personnel

Doug Martin NRD staff
Tom Mostad NRD staff

Staff

Gerald Mueller Facilitator

Agenda

- Review summary of the January 9, 2008 Meeting
- Updates
 - Steering Committee members
- Seeley Lake Water Supply and the Basin Closure
- Natural Resources Damage (NRD) Settlement and State Restoration Plan for the Clark Fork River
- Discussion of the Goals for a Master Plan for NRD Expenditures for Upper Clark Fork River Remediation Program
- Clark Fork River Reconnection Project Funding Application
- Water Policy Interim Committee Bill Drafts
- Public Comment
- Next Meeting

January 9, 2008 Meeting Summary

The Steering Committee made no changes to the meeting summary.

Updates

Steering Committee Members - Mary Sexton has appointed Rep. Bob Villa to the Steering Committee. Brent Mannix has asked that he be replaced.

Seeley Lake Water Supply and the Basin Closure

Gerald Mueller introduced Dr. Walter Hill, a representative of the Seeley Lake Water District. Dr. Hill appeared at the Hamilton meeting of the Water Policy Interim Committee (WPIC) to request that the upper Clark Fork River basin water right closure be amended to provide an exemption for municipal water rights. After his presentation, Mr. Mueller invited Dr. Hill to this meeting to discuss Seeley Lake's concerns.

Dr. Hill explained that Seeley Lake recently passed a general obligation bond to upgrade its water system. The system currently has no storage for fire protection and only an 8 inch main line. The bond issue will fund a 500,000 gallon tank and an 18 inch main, which will also allow growth on the system. The Water District presently has a water right for 350 acre feet from Seeley Lake, an amount of water equal to about 0.15-.2% of the flow through the Clearwater River basin. Current demand is approaching this 350 acre feet limit, and hence the Water District is exploring ways to acquire more water. Basin closures in other parts of the state allow an exemption for municipal use, but the Upper Clark Fork closure does not. Amending the upper Clark Fork closure would allow equal treatment for municipalities in this basin with those affected by other basin closures. Seeley Lake is not now an incorporated town, so it would have to incorporate to make use of a municipal exemption. Seeley Lake has looked at drilling wells, but the geology is not favorable.

Comment by Mike McLane - The Clearwater River contributes 10% of the flow of the Blackfoot River. The Seeley Lake Water District is subject to a water right call by the Montana Department of Fish, Wildlife and Parks in water short years such as last year to protect its Blackfoot River Murphy rights. The stretch of the river affected by Seeley Lake water withdrawals is a critical reach for bull trout. Additional municipal surface water rights for Seeley Lake would be in conflict with DFWP's Murphy rights. DFWP would not favor opening the upper Clark Fork basin closure to allow for a municipal exemption.

Comment - The Steering Committee sought a water right closure of the basin because of general agreement that no more water is available to appropriate. New water rights would present only a false promise of supporting new water uses. Seeley Lake needs a long-term solution which a new junior water right likely could not provide.

Comment - Below Seeley Lake there are a large number of water users with rights junior to DFWP's Murphy rights that would be affected by an additional appropriation.

Question - Are there senior water rights that the Seeley Lake District might acquire to meet its growing water needs?

Answer by Mike McLane - The adjudication of Blackfoot basin rights has just started. However, looking at existing water right records, there appears to be rights senior to the Murphy rights that might meet Seeley Lake's needs.

Question - You mentioned a 350 acre feet water right. Do you know what your flow needs are?

Answer by Dr. Hill - The average use is 300 gpm during slow months and 500-620 gpm in heavy-use months (typically July – Sept).

Question - What are your additional needs on a volume basis?

Answer by Dr. Hill - My guess is that we would not need more than 500 acre-feet for the foreseeable future. We use the most water in July and August.

Question - Where does Pyramid Lumber get its water?

Answer by Dr. Hill - Pyramid uses city water primarily, although they also have a well.

Question - Does Plum Creek have significant water rights?

Answer - No.

Question - Wouldn't most existing rights that Seeley Lake might acquire have a period of use limited to the irrigation season, whereas domestic use tends to be year round?

Answer by Mike McLane - This might be an issue in the water right change process. One way to address it could be storing high flows in the lake or in the ground.

Comment - It appears to me that if Seeley Lake needs the water badly enough, it will have to pay for it.

Question - Are the customers of the Water District metered?

Answer by Dr. Hill - Yes.

Question - How many water connections does the District currently have?

Answer by Dr. Hill - We have 540 connections on 720 lots in the district. We expect to have 1,000 to 1,200 dwelling units by the end of the next decade.

Comment - The issue of expanding the domestic water supply is not limited to Seeley Lake. Other towns in the basin, including Drummond, Hall, and Ovando, may also face it. Perhaps we should attempt to engage other basin communities in a discussion about this issue.

Comment - We should be careful not to become viewed as water brokers. This is a private sector responsibility.

Comment - Domestic water use has two parts, in-house use and water for irrigating lawns and gardens. The former is a smaller consumptive use. Existing water users are unlikely to be willing to forgo their use so people can water their lawns and gardens.

Steering Committee Action - The Steering Committee agreed to continue discussing the issue of supplying domestic water use growth at its next meeting. It also asked Mike McLane to report back in 60 days about ways to address Seeley Lake's water problems though acquiring other water rights, and Mr. McLane agreed to do so.

Natural Resources Damage Settlement and State Restoration Plan for the Clark Fork River

Carol Fox and Doug Martin reported on three topics: the consent decree settling the remaining claims in Montana vs. ARCO which was filed with the court on February 7, 2008; the revised restoration plan for the Clark Fork River; and a proposed framework for the expenditure of NRD

funds resulting from the settlements. A summary of the settlement is included below in Appendix 1. The content of Mr. Martin's Power Point presentation about the revised restoration plan is Appendix 2. The flow chart used by Ms. Fox to explain the proposed framework is Appendix 3.

A summary of Steering Committee member comments and questions regarding the three documents follows.

Settlement Summary

Question - What is the relationship between DEQ and EPA?

Answer - DEQ will prepare the remedial design/remedial action (RD/RA) document, which will then be reviewed by EPA. EPA will provide comments to DEQ before the document will be implemented.

Question - In the past, EPA approved the design on a step-by-step basis. Will that process continue?

Answer – As EPA gained confidence in the state's remediation work on Silver Bow Creek, its oversight of the state decreased over time. We expect EPA's oversight to continue in this same vein.

Question - Are there other areas that remain to be settled?

Answer - Settlements remain to be reached for the implementation of the Record of Decision (ROD) for the remediation of three sites: Butte Priority Soils Operable Unit, Warm Springs Ponds, and the Anaconda Smelter Site. A settlement is also needed for the Dutchman project, which will involve land and water rights on Warm Springs, Mill, and Willow Creeks and integrating remediation and restoration of Warm Springs and Willow Creek.

Revised Restoration Plan

Question - What is the difference between remediation and restoration?

Answer - Remediation repairs damage done to natural resources to protect human health and the environment. Required remediation actions are specified in the Record of Decision (ROD). Restoration actions attempt to restore natural resources to their pre-damaged condition. Restoration actions are over and above remediation actions.

Question - When was the original plan was developed?

Answer - *The original plan was developed in 1995 and revised in 2004.*

Question - How is flow addressed in the restoration plan?

Answer - Increased flow is used to off set the effects of residual contamination on flora and fauna.

Question - Who will set the priorities for the expenditure of restoration funds on the mainstem?

Answer - DFWP and NRD will set the priorities.

Comment - You mentioned a buffer along the river. I assume that any land acquisition will be based on a willing seller rather than condemnation?

Response - The restoration plan activities will be voluntary. Remediation actions to protect human health and the environment can be mandatory, but restoration actions are not.

Proposed NRD Funding Framework

Question - You stated that Butte-Silver Bow will set the priority for the ground water funding related to the injured bedrock aquifer. What happens if we discover ground water contamination that we didn't know about?

Answer - The settlement includes reopeners for increased remediation funding if additional contamination threatening human health and the environment is discovered.

Question - What would happen if as a new subdivision puts in a community ground water system it discovers new contamination?

Answer - We would look for the source of the contamination. If the source was tailings, we could seek additional funding from ARCO for remediation.

Question - What would implementing this funding buy us? Can we quantify what it will mean to the basin and the fishery?

Answer - We want to quantify our objectives as much as possible. We expect to have a healthy Clark Fork fishery.

Question - What are the funding goals?

Answer - The broad goal is to restore and/or replace damaged natural resources in timely, cost effective, and prioritized basis.

Question - Assume that the current fishery in the Deer Lodge Valley is at 20% of its capacity. After spending the NRD funds, can we say that the fishery will 50% or 80% better?

Answer - Setting measurable goals and measuring progress towards a meeting them was a concern of the pier review panel for the Milltown remediation. The panel decided that rather than fish number, the goal would be set and progress measured in terms of fish habitat. For the remainder of the basin we are interested in water quality and vegetation after the restoration project is completed. DFWP desires to restore the river to conditions comparable to uncontaminated streams. It seeks a viable native fishery and replacement of lost angler days.

Comment - The Columbia River Fish and Wildlife Program, adopted by the Northwest Power and Conservation Council, originally had a goal of doubling the numbers of anadromous fish. This goal was replaced with subbasin planning.

Comment - Because of the removal of Milltown Dam and the cleanup of the metals in Reach A, we face an uncertain future and cannot set specific numerical goals for the fishery.

Comment - Although we have taken actions to benefit the fishery, such as reconnecting Warm Springs Creek to the mainstem, we haven't monitored the results.

Comment - The Governor's Project which treated tailings in place was only monitored for two years. We should go back and revisit those areas to determine how effective the project was.

Question - Do you view the restoration effort as grounded in adaptive management, which implies rigorous basin-wide monitoring?

Answer - Yes. The program will not be assessed by summing the results of individual projects; rather, it will be based on defined priorities. We will have performance based objectives.

Comment - The prioritization should include a biological and a social component. For example, land owner cooperation will be critical to project success.

Question - I understand that there are organizations that are interested in playing a coordination or master planning role, now that the settlement has happened. What do you see as the role of the NRD Program?

Answer - For the ground water components, we propose that the local communities set priorities for spending. For the aquatic and terrestrial components, the state, primarily FWP and NRDP, should set and accomplish the priorities.

Question - What about the grant program, separate from the monitoring, aquatic, terrestrial, and ground water components of the restoration plan?

Answer - After the framework is adopted, we will work with our Advisory Council on and seek public comment on a revised process for the grants program.

Discussion of the Goals for a Master Plan for NRD Expenditures for Upper Clark Fork River Remediation Program

Stan Bradshaw passed out copies of a report prepared by Montana Trout Unlimited in April 1999 entitled, "Restoring the Upper Clark Fork: Guidelines for Action." Mr. Bradshaw stated that since this report was written much more information has become available. He noted that the basic ideas in the report appear to have been incorporated in the restoration plan and the NRD funding framework discussed today by Doug Martin and Carol Fox.

Clark Fork River Reconnection Project Funding Application

Dennis Workman reported on his efforts to draft an application to NRD. Along with reconnecting the river to its old bed and tributaries, he suggested considering in-river habitat improvements. Mr. Workman showed photographs of portions of the Clark Fork River from Drummond to Rock Creek that appear to be promising for reconnections, that might serve as undisturbed reaches for purposes of comparison, or might be candidates for in-river habitat work. The photographs, which were down loaded from Google Earth, are shown in Appendices 4 - 10. Respectively, they show reaches at the Powell County line (Appendix 4), upstream of Drummond (Appendix 5), up and down stream of the weigh station just west of Drummond (Appendices 6&7), Gold Creek (Appendix 8), Bearmouth (Appendix 9), and mile marker 133 (Appendix 10). The photos of Powell County line and upstream of Drummond show possible undisturbed reaches. The photos up and downstream of the weigh station show reaches of the river cutoff only by the Milwaukee Road bed, which no longer has track on it. The Gold Creek, Bearmouth, and Mile Marker 133 photos show reaches in which reconnection would require bridging I-90 and/or both railroads. These may be candidate areas for in-river habitat projects, as building the bridges would probably be too costly.

Mr. Workman stated that he is considering four phases for the project. The first, which would be funded by the initial grant request, would be a reconnaissance phase to identify candidate reconnection sites. The second phase, which would require a subsequent grant request, would be field work to ensure that the sites are feasible. The third phase, which would again be subject to another grant application, would be a detailed project design for the sites selected. The last phase, requiring a separate grant would be actual project construction.

Comment - The land reaches of the river cutoff only by the Milwaukee Road bed shown in the photos up and downstream of the weigh station may be owned by the Bureau of Land Management.

Comment by NRD Staff - The initial grant that you have described requesting would be a project development grant. We normally do not entertain grant requests that are trying to decide which project to try to develop. You should probably decide on a specific project or projects. Also, the NRD Program has not yet decided which projects would be a priority for the restoration funding and which should be pursued through grants.

Comment - The TU Report, which Stan Bradshaw passed out, did not list reconnection of the river to its old bed as a high priority.

Steering Committee Action - The Steering Committee agreed in concept to expanding the grant application to include in-river habitat projects as well as the reconnection of the river to its old bed and tributaries. However, before writing an application, Mr. Workman and Mr. Mueller should have additional discussions with NRD staff to decide the best way to proceed.

Water Policy Interim Committee Bill Drafts

The Steering Committee discussed the eight bill drafts that WPIC had posted on its web site, using Mr. Mueller's January 16, 2008 memorandum on the bills which is included below as Appendix 11.

Steering Committee Action - The Steering Committee requested Holly Franz to attend the next WPIC meeting on March 12 and 13 in Helena and offer the following comments:

- ***LC5002 - We do not support this bill as it apparently would allow a ground water applicant to avoid permit requirements, including pump tests.***
- ***LC5003 - WPIC should consider the approach taken in Idaho which retains local control but provides that water commissioners would be state employees. State employment would provide commissioner benefits, such as health insurance and workers compensation coverage. It would also allow the state to provide them important technical support.***
- ***LC 5005 - We do not understand how this bill would work and do not support allowing MDT to reopen the basin closure by obtaining a water reservation.***

Public Comment

There was no additional public comment.

Next Meeting

The next meeting is scheduled for Tuesday, March 25, 2008 in Deer Lodge. The agenda will include a discussion of the growing domestic water needs of basin communities.

Appendix 1
Summary of Settlement of Clark Fork River Remediation and
Remaining Natural Resource Damages (NRD) Claims

A. Introduction

The State of Montana, the United States, and the Atlantic Richfield Company have negotiated a Consent Decree (CD) that will settle certain litigation, provide for the funding of the remedial action at the Clark Fork River (CFR) Operable Unit and provide for certain restoration actions at the three sites where the State has pending NRD claims, namely the Clark Fork River, Butte Area One, and the Smelter Hill Uplands. This CD was lodged with the federal court on February 7, 2008. There is also a second consent decree, involving only the State and ARCO, which was lodged at the same time.

ARCO is paying about \$95 million for the remedial cleanup provided for in the 2004 Record of Decision for the CFR site; this includes about \$11.7 million in interest accruing since April of 2006. The remediation payment will be made in two payments, one year apart; the first payment will most likely be in August or September 2008.

ARCO is also paying \$72.5 million to settle the State's remaining YRD claims in Montana v. ARCO. The NRD payments will be made over a four year period, Interest on the NRD claims does not begin to accrue until the Consent Decree's effective date (i.e., upon court approval of the CD).

In addition, ARCO is paying: about \$8.4 million to EPA for oversight and past costs; \$4.4 million to the National Parks Service (NPS) for oversight, past costs and certain restoration at Grant-Kohrs Ranch; and \$350,000 to the Bureau of Land Management (BLM) for restoration of BLM lands along the Clark Fork River.

B. The CER Cleanup –the Parties Rights and Obligations Under the Consent Decree

1. Remedial design and investigation will be performed by the Montana Department of Environmental Quality (DEQ), acting as lead agency for the remediation. DEQ will utilize RipES data already collected by EPA for the design.
2. Implementation of the remedy by DEQ will occur over a 10 to 12 year period. During this time there will be extensive outreach to landowners along the river to assure cooperation and coordination. It is expected that DEQ will follow the Silver Bow Creek model for contracting the work to be performed.
3. There will be integration of NRD restoration with Clark Fork River remediation, and an accounting for restoration in lieu of remedy.
4. Remediation and restoration on Grant Kohrs Ranch to be performed by DEQ.
5. EPA and NPS oversight of the cleanup, the SMOA and dispute resolution.

6. The \$95 million payment from ARCO to the State will be invested with the Montana Board of Investments (BOI) in the “Clark Fork Site Response Action Account” and will be managed by DEQ and BOI.
7. Establishment of the “CFR Reserve Account:” \$12.5 million for potential remediation and restoration cost overruns, This will come from the SBC Reserve Account, which will have a balance of about \$17.5 million as of the CD effective date. The remaining \$5.0 million in the SBC Reserve Account will then be transferred to UCFRB Restoration Fund. When the CFR cleanup is complete, the money left in this reserve account, including interest earnings, will also go to the UCFRB Restoration Fund.
8. Any money left over from the \$95 million, plus the interest accruing after the CD effective date, in the CFR Response Action Account will be transferred to the CFR Restoration Account.
9. The first \$9.4 million in “Further Response Costs,” above the \$95 million, plus interest, comes out of CFR Reserve Account.
10. Any “Additional Response Costs,” thereafter, comes out of the “round robin” (EPA pays first 55.0 million, State the second \$5 million, ARCO the third 55 million).
11. Conditions on disposal of tailings at Opportunity Ponds: disposal of tailings removed under remedy and restoration will occur at the B2- 12 cell and the State will assume some limited reclamation responsibilities.
12. Water Rights for CFR remedy and restoration (including in-stream flow).
13. Covenants and reservations of the parties contained in the CD, including new information and unknown conditions re-opener in favor of the State and the United States.

C. NRD Settlement and State Restoration Plans

1. Five NRD Accounts invested with BOI and managed by the NRD Program and BOI. Interest earned on each account will be reinvested in that account and used for the purpose associated with the account.
 - a. Assessment and Litigation Cost Recovery Account: \$4.5 million.
 - b. CFR Restoration Account: \$26.7 million.
 - c. Smelter Hill Uplands Area Restoration Account: \$13.3 million.
 - d. Butte Area One Restoration Account: \$28.0 million.

- e. CFR Reserve Account: \$12.5 million.
- 2. CFR Restoration Plan is to be integrated with the CFR cleanup using the \$26.7 million, plus interest thereon.
 - a. Additional tailings removal.
 - b. Aquatic habitat improvements.
 - c. Upper Blackfoot River bull trout restoration (52.5 million).
 - d. Floodplain stabilization and revegetation.
 - e. Land and conservation easement acquisition.
 - f. Flow Augmentation.
- 3. Smelter Hill Area Restoration and Remedial Commitments
 - a. Remedial commitments on State owned property at Mount Haggin and Stucky Ridge (about \$2.3 million).
 - b. Additional Restoration on Mount Haggin and Stucky Ridge (about \$7.1 million).
 - c. Restoration of County Owned Lands on Smelter Hill and Stucky Ridge (about \$4.0 million).
 - d. Additional remedial commitments to ARCO under State CD II.
- 4. Butte Conceptual Restoration Plan and Planning Process
 - a. State's conceptual plan is not mandatory.
 - b. Removal of Parrot and Metro Storm Drain tailings (780,000 cubic yards at about \$26.0 million).
 - c. Capping and enhancement of mine waste dumps (95 acres at about \$4.0 million).
 - d. Water facility replacements and construction.
 - e. Proposed Butte Restoration Planning Process (see handout).
- 5. Property conveyances to the State as additional consideration for the NRD settlement: two parcels of land, 40 acres on the CFR and 310 acres off the river (for borrow) near Deer Lodge, and water rights.

D. Process Between Now and CD Effective Date and Thereafter

- 1. Notice of 60 day public comment period on the two consent decrees and three restoration plans. Comments are due by April 12, 2008.
- 2. Public outreach and meetings.
- 3. Consideration of public comments by the State and United States and decision whether to move forward with the settlement.
- 5. Governments' responses to public comment, and filing responses and motions to enter consent decrees with the court
- 6. Court approval triggers CD effective date.

7. Sixty days later, first payments from ARCO to be made.
8. Potential revisions of State restoration plans based on public comment after consent decrees become effective.

Appendix 2

Revised Restoration Plan for the Clark Fork River

INTRODUCTION

- Presentation Outline
 - Natural Resource Injuries
 - Remedial Actions
 - Restoration Goals
 - Restoration Alternatives
 - Restoration Preferred Alternative
 - Implementation and Schedule
 - Public Comment Period on Plan

CFR NATURAL RESOURCE INJURIES

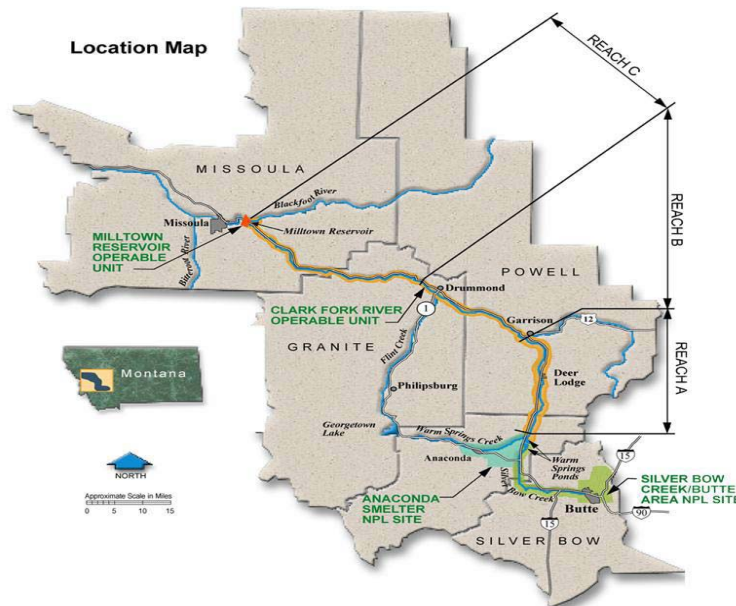
- Surface water, bed sediments, macroinvertebrates contain elevated levels of hazardous substances;
- Consumption of contaminated benthic macroinvertebrates by trout has been shown to cause reduced growth; and
- Trout populations are approximately 20% of baseline levels;

CFR NATURAL RESOURCE INJURIES

- Rainbow trout largely absent from the CFR upstream of Rock Creek;
- Populations of otter, mink and raccoons are significantly reduced relative to baseline conditions; and
- Approximately 200 acres of floodplain entirely or largely devoid of vegetation having no capacity to support viable wildlife populations.

REVIEW OF 2004 CFR ROD

- Majority of work in Reach A, only a small part of Reach B



- RipES evaluation performed by EPA in 2006-2007.
- Two Main Areas of Remediation
 - Streambanks
 - Tailings

REMEDIAL ACTION

- DEQ is the lead Agency, working cooperatively with NRDP, to implementing combined Remediation/Restoration Activities.
 - Joel Chavez, Project Officer
 - Brian Bartkowiak, UCFR Operations Officer
- EPA – oversight role
 - Kris Knutson, RPM
- NPS – oversight role for cleanup activities performed on Grant-Kohrs Ranch

REMEDIAL ACTION

- Other Aspects
 - Tributaries: historic 100-year floodplain
 - Trestle Area in Deer Lodge – is prioritized to be addressed quickly under remedy
 - East Side Road - further evaluation to determine human health impacts and establishment of vegetation
 - All removed material to Opportunity Ponds

REMEDIAL ACTION

- Timeframe
 - Spring/Summer 2008 – DEQ developing a combined Remedy/Restoration Work Plan, describing the general cleanup approach
 - Summer/Fall 2008 – sampling and development of Remedial Action Work Plans for the Trestle Area, East side Roads, and initial properties on the Clark Fork
 - 2009 - construction scheduled to begin
 - 2010-2020 – Full scale construction, possibly working at 3 different locations at one time.
- Generally work Warm Springs to Garrison

RESTORATION PLAN

- State Trustees Goals and Objectives:
 - Restore aquatic resources to baseline condition.
 - Restore terrestrial habitat to baseline conditions along the riparian zones and floodplains.
 - Offset residual effects to flora and fauna from hazardous substances not eliminated.
 - Maximize long-term beneficial effects and cost effectiveness of restoration activities.
 - Improve natural aesthetic values.

CFR RESTORATION PLAN

- All restoration alternatives based on \$27.5 million settlement.
- Assumes integration with remedial action
- Assumes landowner cooperation

KEY RESTORATION ACTIONS

- Removal of streambank contaminated material
- Flow augmentation / Water Commissioner to mitigate the effects of residual contamination
- Land acquisition or easement to protect the restoration investment
- Monitoring and maintenance

ALTERNATIVE 1

- Removal of 90 acres of buried tailings > 1 foot in thickness;
- Removal of 67 acres of contaminated soils within 50-feet of outside bends of the river identified as highly erodible;
- Planting of woody vegetation on 201 acres of floodplain tabs;
- Vegetation augmentation of 789 acres;
- Upper Blackfoot River bull trout restoration;
- CFR mainstem aquatic improvements 75,000 feet;
- Flow augmentation / Water Commissioner;
- Land acquisition / Easement; and
- Monitoring and maintenance.

ALTERNATIVE 2

- Removal of 700 acres of buried tailings with impacted vegetation;
- Flow augmentation / Water Commissioner;
- Land acquisition / Easement; and
- Monitoring and maintenance.

ALTERNATIVE 3

- Removal of 90 acres of buried tailings > 1 foot in thickness;
- Removal of 67 acres of contaminated soils within 50-feet of outside bends identified as highly erodible;
- Planting of woody vegetation on 201 acres of floodplain tabs;
- CFR mainstem aquatic improvements 100,000 feet;
- Upper Blackfoot River bull trout restoration;
- Vegetation augmentation 525 acres;
- Flow augmentation / Water Commissioner;
- Land acquisition / Easement; and
- Monitoring and maintenance.

ALTERNATIVE 4

- Removal of 157 acres of contaminated soils within 50-feet of outside bends identified as highly erodible;
- CFR mainstem aquatic improvements 100,000 feet;
- Upper Blackfoot River bull trout restoration;
- Planting of woody vegetation on 201 acres of floodplain tabs;
- Vegetation augmentation on 789 acres;
- Flow augmentation / Water Commissioner;
- Land acquisition / Easement; and
- Monitoring and maintenance

SELECTED ALTERNATIVE

- State Selected Alternative 1
 - Note: No alternative will return CFR to a baseline condition.
 - Alternative 1 best accomplishes Restoration Goals.
 - Alternative 1 best accomplishes goals in most effective manner.

PREFERRED ALTERNATIVE 1 - COSTS

- **Capital Cost:**
 - Removal of Tailings/Contaminated Soils > 1 foot (90 ac) \$4,139,808
 - Removal from Outside Bends (67 ac) \$2,330,018
 - Floodplain Revegetation 789 ac \$4,036,171
 - Willow Plantings (201.2 ac) \$186,283
 - CFR Aquatic Improvements (75,000 feet) \$3,112,766
 - BFR Bull Trout Restoration \$2,188,016
 - Flow Augmentation / Water Commissioner (50 yrs) \$469,180
 - Land Acquisition / Conservation Easements \$2,046,221
- **Subtotal Capital Cost:** **\$18,505,462**
- **Miscellaneous Design Costs:** **\$7,032,076**
- **Monitoring and Maintenance @ 1%** **\$1,876,538**
- **TOTAL COST REMOVAL ALTERNATIVE** **\$27,413,556**

Costs are assumed to be incurred over a ten-year construction period and are discounted to a present net value using a 2 ½ -percent discount rate.

IMPLEMENTATION & SCHEDULE

- Restoration w/in Remedial Action area:
 - Integrated with remedial action
 - Some restoration actions will augment others will replace remedial action
 - Schedule: 2008 thru 2020
- Restoration outside Remedial Action area:
 - i.e., flow augmentation, work in Reach B or C, acquisitions/easements, upper BFR
 - Completed as priority projects outside the grants program
 - Schedule: TBD / ASAP

ADDITIONAL INFORMATION

- Natural Resource Damage Program's website @ <http://www.doj.mt.gov/lands/naturalresource/default.asp>
- CD copies by request call NRDP at (406) 444-0205.
- The plan is also available for viewing at the designated Clark Fork River repositories in Butte, Anaconda, Deer Lodge, and Missoula.

INFORMATION REPOSITORIES

- **Hearst Free Library - Anaconda, MT 59711**
- **EPA Butte Office, 155 West Granite, Butte, MT 59701**
- **Montana Tech, 1300 West Park, Butte, MT 59701**

- **Grant-Kohrs Ranch**, 266 Warren Lane, Deer Lodge, MT 59722
- **Powell County Planning Office**, 409 Missouri Street, Deer Lodge, MT 59722
- **Missoula City/County Library**, 301 East Main Street, Missoula, MT 59802
- **Mansfield Library**, University of Montana, Missoula, MT 59812
- **EPA Records Center**, 10 West 15th Street, Helena, MT 59626, 406-457-5046

PUBLIC COMMENT

- **The State is accepting public comment on the CFRRP ending April , 2008.**
- Submit Written or Electronic Comments to:
 - Doug Martin
NRDP/DOJ

P.O. Box 2011425

Helena, MT 59620-1425

dougmartin@mt.gov

REMEDIAL ACTION

- Streambank Remediation
 - Class 1 (16.5 Miles): unstable, eroding banks
 - Class 2 (54.1 Miles): some instability, erosion
 - Class 3 (20.0 Miles): generally not eroding
- Treatment of Streambanks
 - 6 treatments listed in ROD: No treatment to rip-rap
 - Specific treatments dependent on streambank class, river morphology, site hydraulics

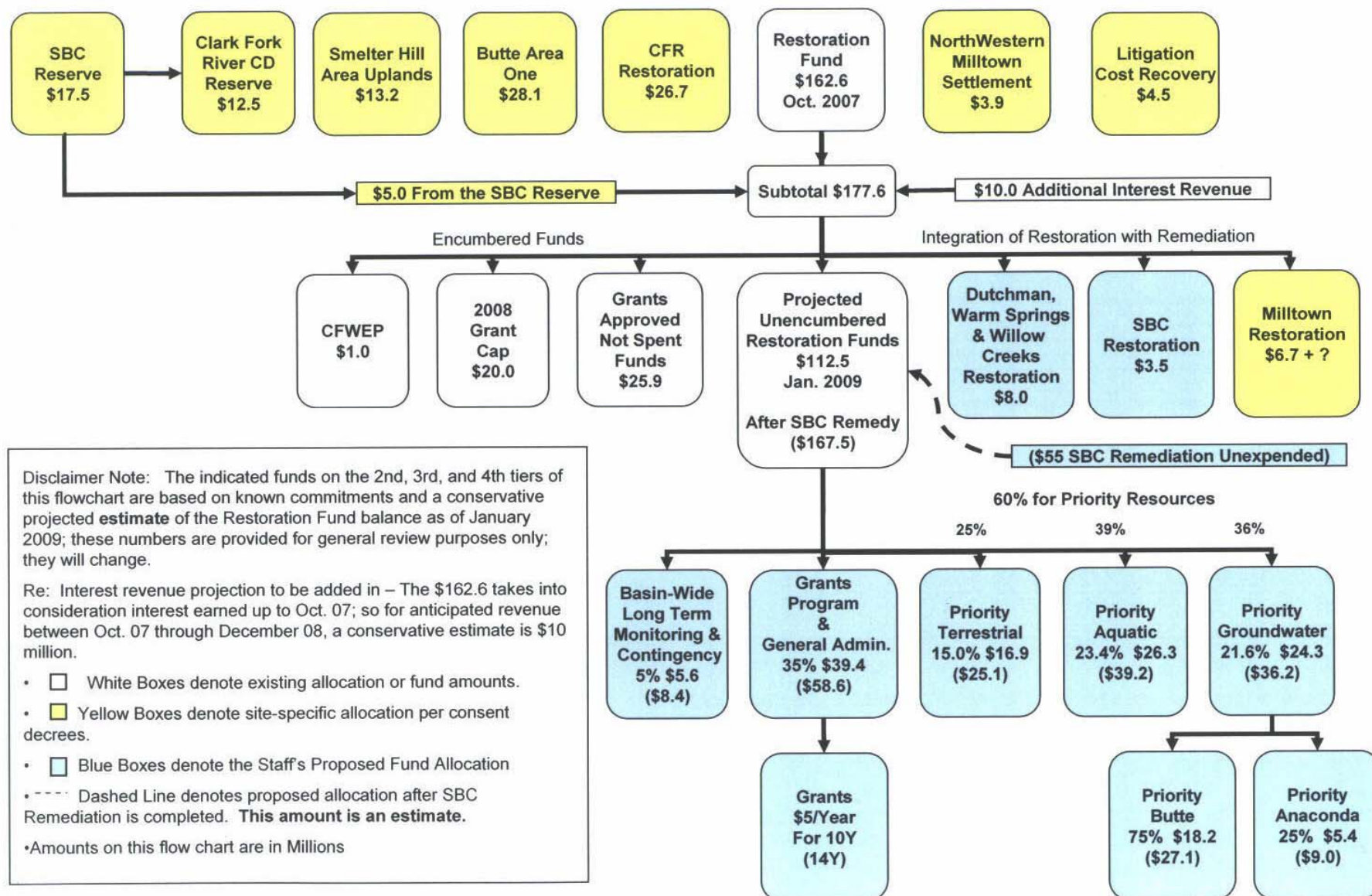
REMEDIAL ACTION

- Tailings Remediation
 - Exposed Tailings: 167 acres to be removed
 - Buried Tailings w/ Impacted Veg: 700 plus acres - treated in place
 - Buried Tailings w/ marginally impacted Vegetation: 2,703 acres - no treatment

Appendix 3

Draft UCFRB NRD Fund Allocation Flow Chart

February 2008





Appendix 4
Powell County Line



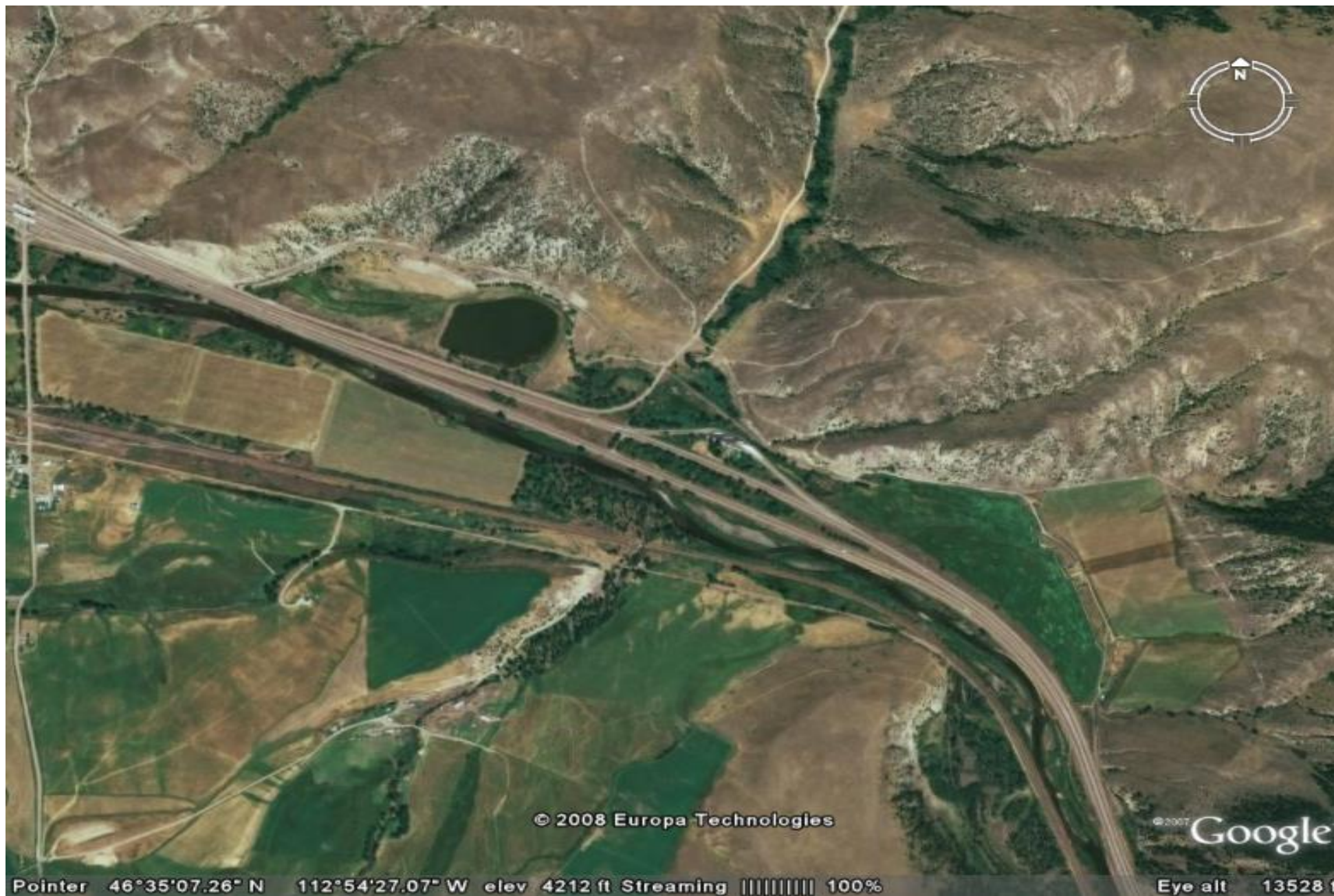
Appendix 5
Upstream of Drummond



Appendix 6 – Upstream of the Weigh Station



Appendix 7 – Downstream of the Weigh Station



Appendix 8 – Gold Creek



Appendix 9 – Bearmouth



Appendix 10 – Mile 133

Appendix 11
Upper Clark Fork River Basin Steering Committee
C/O Gerald Mueller
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Missoula, MT 59801
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MEMORANDUM

Date: January 16, 2008
To: Upper Clark Fork River Basin Steering Committee
From: Gerald Mueller
RE: Water Policy Interim Committee Draft Bills

During the January 15-16 Water Policy Interim Committee (WPIC) meeting the public commented on and WPIC discussed the eight bills, LC 5001 - 5008. WPIC agreed to continue to consider all eight, plus two more. One of the additional bill drafts requested would establish a funding mechanism for infrastructure improvements in subdivisions representing “partnerships” between counties and developers. Except for the requirement that the subdivisions be in zoned areas, details of the nature of the partnerships remain to be set forth. I assume that partnership would mean that the subdivisions would have county approval. The other requested bill draft would ensure that the quality of water injected into the ground would be at least as good as that of the water removed. The next WPIC meeting will be in Helena on March a date to be determined.

The following reflects my notes on the public, agency and WPIC comments on each of the bills.

- LC5001, “Accelerated Permitting Bill” - This bill provides for an accelerated permitting process by allowing an applicant for an appropriation right in a basin closed to new appropriations to avoid submitting a hydrogeologic assessment if the applicant submits a mitigation plan or an aquifer recharge plan that provides for the offset of at least 100 percent of the amount of groundwater withdrawn by the proposed appropriation, regardless of the amount of net depletion to surface water or adverse affect. John Tubbs expressed the concern that this bill would shift the burden for conducting the hydrogeologic assessment from an applicant to either DNRC or objectors or both. DNRC and/or objectors would have to conduct the assessment to ensure that the mitigation or an aquifer recharge plan would offset 100% of groundwater withdrawn. Another concern is that the requirement for offsetting may not address impacts related to the timing or place of the withdrawal. In other words, the offsetting may not preserve the same conditions in the source of supply for senior water right holders. Finally, the bill does not specify what happens if the mitigation or aquifer recharge plan does not work as intended.
- LC5002 - “Notice of Intent to Drill Bill” - This bill allows a person to issue a notice of intent to drill a well for which a water permit is required, and provides that if no objections are received, then the department may issue a provisional permit. DNRC is concerned that this bill may require objections before a pump test is conducted. Pump tests are necessary for objectors to determine if they would be adversely affected by the new ground water appropriation. DEQ’s Steve Killbreath stated that a notice of intent to file would not preclude DEQ permit requirements, including a pump test.
- LC5003 - “Enforcement Bill” - This bill creates a new division of water rights enforcement within DNRC headed by a state engineer. It charges the new division with the responsibility for the

administrative enforcement of water rights and for administratively preventing the unauthorized use of water. The division would also employ water commissioners. The new division would be assigned enforcement responsibilities now exercised by the courts. Both John Tubbs and Anne Yates, DNRC's water attorney, expressed concerns about specific provisions of this bill. The bill appears to require DNRC to administer all decrees, even if the local users do not request a commissioner. DNRC would act as both the enforcement entity and the judge in permit applications. A hearings examiner may also be able to impose costs on DNRC if DNRC is an unsuccessful objector. This bill would impose a new layer between water users and the court. Courts have more clout than DNRC officials would have in administering decrees. Senator Jent asked that the state engineer be autonomous, i.e. not under the authority of DNRC. Three members of the public commented that the existing water commissioner mechanism is working well in the West Gallatin, Willow Creek, and Burnt Fork drainages and prefer working under the authority of the district court. A former DNRC employee spoke in favor of the bill because it would provide benefits for commissioners. Another noted that the current method of paying for water commissioners is not fair because it places all costs on those water right holders who receive water rather than all right holders under the decree. Rep. Boggio stated that he remains interested in ways to improve enforcement to protect senior water rights.

- LC5004 - "Community Water and Sewer Incentive Bill" - This bill revises the laws relating to water quality for subdivisions by clarifying the authority of local governments to require community water supply systems and public sewer and waste water systems for subdivisions, authorizing state and local governments to give priority in the review process to subdivision applications that provide for community water supply systems and public sewer and waste water systems. Myra Schultz, a land use attorney, stated that 76-3-511 has only been used once. Ravalli County Commissioner James Rokosch stated that counties must render a decision on subdivision applications within 60 days, and in light of this fact, it is not clear what is meant by "the local governing body may give priority to applications that provide..." He also stated that MEPA cannot be used as a decision making tool even for subdivisions that are so large that they amount to new towns. A better interface between MEPA and local subdivision decision making is needed. The county needs additional resources and more time to respond to large subdivision applications.
- LC5005 - "MDT Reservation Bill" - This bill was requested by the Montana Department of Transportation (MDT). It provides for the issuance of state water reservations for aquatic resource activities carried out in compliance with and as required by the federal clean water act of 1977 in all closed basins for surface water and ground water, provides that the water reservations may not be used for dilution and are not subject to a change of use, and exempts applicants for state water reservations for aquatic resource activities from the requirement of preparing a hydrological assessment or providing a mitigation plan. I asked WPIC about the utility of the bill, given that the reservation would have the most junior water right in a closed basin. Don MacIntyre responded to my question on behalf of MDT. He also talked with me privately. MDT needs a water right to receive credit for wetland mitigation under the federal Clean Water Act. A water reservation would allow MDT to make call on exempt wells and other more junior uses exempt from basin closures. It would also provide protection should closures be eliminated. This bill is not intended to allow MDT to divert additional water for wetlands, an activity that would require a permit. MDT would use the reservation in the case where it would close off return flow ditches to create a wetland. Water would continue to flow to nearby water bodies, but would flow through the wetland rather than a ditch.
- LC5006 - "The Subdivision and Water Right Disconnect Bill" - This bill eliminates the disconnect between subdivision and water right permitting by final plat by requiring that approval for a subdivision may not be granted unless the applicant submits evidence that a permit to appropriate water has been obtained. Several commentators supported the purpose of the bill. Myra Schultz noted that the

bill attempts to combine the decisions about the adequacy and legality of the water supply. She stated that 76-3-622 was modified by SB 290 in 2005. In SB 290, Realtors and the building industry successfully sought to preclude counties from making decisions on scientific issues, so that they can only be addressed by state agencies. Information collected under 76-3-622 should be supplied to the county for its decision. Don MacIntyre argued that to shorten the time required to obtain a water right, the process should be changed from a contested case to a negotiation process. The applicant, intervening parties, and DNRC would negotiate the conditions for the permit. Any dissatisfied party could then appeal the conditions to district court. Ravalli County Commissioner Rokosch noted that without addressing exempt wells, this bill would amount to putting bandages on a corpse. Ravalli County Commissioner Driscoll supported Commissioner Rokosch's comments. Steve Kilbreath stated that DEQ and DNRC have taken steps to address the disconnect between subdivision and water right permitting but have not eliminated it.

- LC5007 - "Ground Water Data Gathering Bill" - This bill provides that the Montana Bureau of Mines and Geology shall develop and implement a ground water investigation program for the purpose of collecting and compiling ground water and aquifer data. The program shall gather data, compile existing information, conduct field studies, and prepare a detailed hydrogeologic assessment report for each subbasin. The program shall develop a monitoring plan for each subbasin for which a report is prepared. The program is funded by an additional fee on each water permit application, each subdivision application, or on each welllog. The combination of funding needs to raise about \$1.2 million for the biennium in order for the bureau to complete 2 subbasins each biennium. Several WPIC members supported the need to conduct a hydrogeologic assessment of the state's ground water on a subbasin bases. Representative McNutt appealed for support from the public for the appropriation. Ravalli County Commissioner Rokosch stated that a dire need exists for ground water data compatible with GIS. John Tubbs noted that an advisory committee already exists for the MBMG's ground water assessment program. He also expressed concern that the hydrogeologic assessment required under this bill not substitute for the assessment required for a specific application under HB 831.
- LC5008 - This bill provides that: the chief water judge shall resolve all issue remarks on claims that have received an objection, whether each issue remark is subject to an objection or not; prior to an enforcement action pursuant to 85-2-406, the chief water judge shall resolve all issue remarks related to flow rate or volume; and a temporary preliminary decree or preliminary decree or a portion of a temporary preliminary decree or preliminary decree may be enforced prior to final resolution of all issue remarks in certain instances. There were no comments in opposition to this bill.